

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

VICTOR CHARLES FOURSTAR, JR.

Plaintiff,

vs.

RICHARD KANE, et al.

Defendants.

CV 16-00019-GF-BMM

**AMENDED
ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Victor Fourstar, Jr. filed a Motion to Proceed in Forma Pauperis (Doc. 1), a proposed Complaint (Doc. 2), and several other motions including a motion for recusal of judges (Doc. 5). Fourstar is a federal inmate housed in the United States Penitentiary in Marianna, Florida. United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on May 17, 2016. (Doc. 6 at 5.) Judge Johnston has recommended that the Court deny Fourstar's Motion to Proceed in Forma Pauperis. *Id.* Judge Johnston reserved ruling on Fourstar's "Motion for Recusal of Judges" as it did not pertain to Judge Johnston. (Doc. 6 at 1.)

Fourstar filed objections to Judge Johnston's Findings and Recommendations. (Doc. 7.) Fourstar should not be entitled to a fourteen-day

objection period. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998). Regardless, the Court considered the objections and determined the objections to be meritless.

The Court need not review de novo the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 149-52 (1986). This Court will review Judge Johnston's Findings and Recommendations, however, for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The Court possesses discretion to grant a defendant permission to proceed in forma pauperis. *See 28 U.S.C. §1915(a)*. A prisoner who “has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted” may not bring a civil action or appeal a judgment in a civil action, “unless the prisoner is under imminent danger of serious or physical injury.” *28 U.S.C. § 1915(g)*.

Fourstar has exceeded the three “strikes” allowed by the Prison Litigation Reform Act. He has filed at least three civil actions that have been dismissed as frivolous or for failure to state a claim. Fourstar has not satisfied the imminent danger exception to section 1915(a). *Andrews v. Cervantes*, 493. F.3d 1047, 1055-

56 (9th Cir. 2007). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

Accordingly, **IT IS ORDERED** that Fourstar's request to proceed in forma pauperis (Doc. 1) under 28 U.S.C. § 1915(a) is **DENIED**. The Clerk of Court shall enter, by separate document, a judgment of dismissal.

DATED this 6th day of June, 2016.

A handwritten signature in blue ink that reads "Brian Morris". The signature is fluid and cursive, with "Brian" on top and "Morris" on the bottom, both starting with a capital letter.

Brian Morris
United States District Court Judge